

Applicant: Christian Mayuad
Serial No.: 09/941,841
Filed: August 30, 2001
Page 23

Remarks

Reconsideration of the application is respectfully requested.

These remarks are directed in response to the Office Action mailed November 14, 2007 in the subject Application. Claims 70-84 and 86-115 are pending in the subject Application. A petition for a three-month extension of time along with the petition fee accompanies this amendment.

Additionally, Applicant has amended claims 70, 84, 96, 97, and 101 of the instant application and the presented claims are believed to be patentable over the cited references.

I. Rejection of Claims 70-77, 81-82, 84-86, 91-100, 102-107, 111-113 and 115 under 35 U.S.C. § 103(a).

More particularly, claims 70-77, 81-82, 84-86, 91-100, 102-107, 111-113 and 115 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,390,238 to KIRK (hereinafter "KIRK"), in view of the ABSTRACT of Lunar

Applicant: Christian Mayuad
Serial No.: 09/941,841
Filed: August 30, 2001
Page 24

Radiation Corp. (hereinafter "LUNAR ABSTRACT"), and further in view of U.S. Patent No. 5,301,105 to CUMMINGS (hereinafter "CUMMINGS"). This rejection will be discussed in section A of the response.

On page 10 of the Office Action, Applicant's claim 98 was rejected under 35 U.S.C. § 103(a) as allegedly being obvious over KIRK, LUNAR ABSTRACT, and U.S. Patent 5,307,262 to ERTEL (hereinafter "ERTEL"). This rejection will be discussed in section B of this Response.

On page 13 of the Office Action, Applicant's claim 100 was rejected under 35 U.S.C. § 103(a) as allegedly being obvious over KIRK and CUMMINGS. This rejection will be discussed in section C of the Response.

On page 19 of the Office Action, Applicant's claim 101 was rejected under 35 U.S.C. § 103(a) as allegedly being obvious over KIRK, CUMMINGS, and KEHR. This rejection will be discussed in section D of the Response.

Applicant respectfully traverses the above rejections of the claims.

- A. The cited prior art references fail to teach or suggest, among other limitations of Applicant's claims, information derived from at least two of a plurality of patient records as required by Applicant's claims 70, 84, 91, 96, 97, 99, 102, and 115.

Applicant's claim 70 recites, among other limitations:

(1) **a plurality of patient records for separate patients**, each patient record including information about a patient's prescription history; and

(2) information about pharmaceuticals correlated with medical conditions for which the pharmaceuticals are suitable for treating, **said information derived from at least two of said plurality of patient records**. [emphasis added by applicant]

Applicant's claims 84, 91, 96, 97, 99, 102 and 115 require similar limitations, among others. As such, each of the independent claims 70, 84, 91, 96, 97, 99, 102, and 115 require, among other limitations, **a plurality of patient records for separate patients** and information about pharmaceuticals correlated with medical conditions **derived from at least two of the plurality of patient records**.

The Office Action acknowledges the failure of KIRK and LUNAR ABSTRACT to teach or suggest the above limitations of applicant's claims. Applicant respectfully directs attention to page 2, item 4 of the Office Action, stating that KIRK does not teach **information about pharmaceuticals correlated** ("regarding" as stated in the Office Action on page 2) with medical conditions for which the pharmaceuticals are suitable for treating.

The Office Action then alleges that this feature is taught by the main paragraph of the LUNAR ABSTRACT, in the second sentence. Applicant respectfully disagrees. More particularly, the second sentence of the LUNAR ABSTRACT cited in the Office Action states, in its entirety:

Scan results can be recalled chronologically to aid **monitoring of therapy** and display disease process and patient progress. [emphasis added by Applicant]

As can be seen from the above quoted portion of the LUNAR ABSTRACT, cited in the Office Action, among other limitations of Applicant's claims, the LUNAR ABSTRACT does **not** teach or suggest **anything** regarding **information about pharmaceuticals correlated with medical conditions for which the pharmaceuticals are**

suitable for treating, as required by Applicant's independent claims 70, 84, 91, 96, 97, 99, 102, and 115. The LUNAR ABSTRACT relates to patient database software for an IBM based DP3 and SP2 **bone densitometer**. As such, in relating to a **bone densitometer**, a person of ordinary skill in this art reading the LUNAR ABSTRACT, and particularly sentence 2 of the main paragraph of that Abstract, would not in any way be taught, suggested, or motivated to combine the LUNAR ABSTRACT with the KIRK reference, in the manner suggested in the Office Action.

More particularly, because the portion of the LUNAR ABSTRACT discussing monitoring of therapy relates to a bone densitometer, a person of skill in this art would conclude that the "therapy" discussed in LUNAR ABSTRACT relates to bone therapy such as physical therapy, or other such treatments, but not to the use and storage of information about pharmaceuticals correlated with medical conditions, as required by Applicant's independent claims 70, 84, 91, 96, 97, 99, 102, and 115.

The Office Action further acknowledges, on page 3, first full paragraph, that KIRK in view of the LUNAR ABSTRACT does not teach or suggest "information about pharmaceuticals correlated

with medical conditions for which the pharmaceuticals are suitable for treating, said information derived from at least two of said plurality of patient records" as required by claim 70, and others of Applicant's independent claims. Rather, the Office Action purports that this feature is taught in CUMMINGS, and cites the detailed description in "paragraph 33" of CUMMINGS. Applicant notes that the Office Action has failed to allege that CUMMINGS in combination with KIRK and LUNAR ABSTRACT teaches information derived from at least two of a plurality of patient records.

For purposes of the present response, Applicant presumed that "paragraph 33" refers to Col. 9, line 66 through Col. 10, line 8. However, in the event Applicant is mistaken, Applicant respectfully requests confirmation of the particular section of the CUMMINGS reference being cited. Further, in the event that the current rejection is maintained and the instant rejection does not relate to Col. 9, line 66 - col. 10, line 8 of CUMMINGS, Applicant respectfully requests that the next Office Action not be made final. Applicant additionally respectfully requests any further communication citing CUMMINGS point out the relied upon sections with more particularity.

Col. 9, line 66 through Col. 10, line 8 of Cummings states:

Further reference to the drawings reveals that FIG. 6 is a continuation of FIG. 5. Accordingly, referenced to the upper portion of FIG. 6 reveals that, next the system addresses the question as whether a proposed pattern of treatment is appropriate. This is indicated by rectangle 120. **The physician or staff member enters into the system data identifying the purposed pattern of treatment, whereupon, the system compares the proposed pattern of treatment with the aforementioned recommended treatment protocols and provides an indication of any problem differences.** [emphasis added by Applicant]

However, nothing in this cited portion of CUMMINGS teaches or suggests information about pharmaceuticals correlated with medical conditions for which the pharmaceuticals are suitable for treating, said information derived from at least two of a plurality of patient records, as required by currently pending claims 70, 84, 91, 96, 97, 99, 102, and 115. CUMMINGS only discloses a compilation of possible treatment plans, which **possible treatment plans are not patient records.** As such, CUMMINGS fails to teach or suggest, among other limitations of Applicant's claims, a plurality of patient records. Thus, CUMMINGS cannot possibly be said to teach, suggest or motivate, among other limitations of Applicant's claims, **information derived from at least two of a plurality of patient records, as**

required by Applicant's claims 70, 84, 91, 96, 97, 99, 102, and 115. As such, Applicant's independent claims 70, 84, 91, 96, 97, 99, 102, and 115 are believed to be patentable over KIRK, LUNAR ABSTRACT and CUMMINGS, taken alone or in combination.

Further, even if the Office Action is analogizing, *arguendo*, the recommended treatment protocols of CUMMINGS to Applicant's plurality of patient records for separate patients, as now claimed. The above cited portion of CUMMINGS does not teach or suggest, among other limitations of Applicant's claims, **information about pharmaceuticals correlated with medical conditions and derived from at least two of the plurality of patient records**. Applicant respectfully disagrees that the **plurality of patient records**, cited in the claims, can be analogized to the aforementioned recommended treatment protocols discussed in the Col. 9 and 10 of CUMMINGS. For example, Applicant's claims do not recite a plurality of records per se, but rather, a plurality of patient records from separate patients. The aforementioned recommended treatment protocols of CUMMINGS are not, and cannot be, analogized to patient records. As such, like KIRK and the LUNAR ABSTRACT, CUMMINGS also fails to teach or suggest, among other limitations of Applicant's

Applicant: Christian Mayuad
Serial No.: 09/941,841
Filed: August 30, 2001
Page 31

claims, information about pharmaceuticals correlated with medical conditions derived from at least two of said plurality of patient records.

Because the combined references of KIRK, LUNAR ABSTRACT, and CUMMINGS fail to teach or suggest all of the limitations in Claims 70, 84, 91, 96, 97, 99, 102, and 115, Applicant believes Claims 70, 84, 91, 96, 97, 99, 102, and 115 are patentable over the cited references taken alone or in combination. Applicant respectfully requests reconsideration of these claims and withdrawal of this rejection.

- B. The cited prior art references fail to show, among other limitations of Applicant's claims, interrogating databases expected to contain information about a patient, assembling patient information into a chronologically current version of said patient's prescription history, and said patient's prescription history being displayed but not being permanently stored, as required by Applicant's claim 98.

Applicant's Claim 98 recites, among other limitations,

interrogating databases expected to contain information about a patient based on a patient's relationship with the provider of that database and for assembling patient information into a chronologically current version of said patient's prescription history, said chronologically current version of said patient's prescription history being displayed but not being permanently stored. [emphasis added by Applicant]

Page 10 of the Office Action rejected claim 98 as allegedly being obvious over KIRK, LUNAR ABSTRACT, and U.S. Patent 5,307,262 to ERTEL (hereinafter "ERTEL"). The Office Action alleges that KIRK teaches assembling patient information to a chronologically current version of the patient's prescription history. The Office Action cites KIRK, Col. 3, lines 20-42, and Col. 4, 46-68. Applicant respectfully traverses this characterization. Col. 3, lines 20-42 of KIRK discloses:

Doctors provide medication information including medication changes to monitoring service and pharmacists. Pharmacists provides medication

information to clients, medication approval, and instruction information is sent from pharmacists to monitoring service in the form of a service request.

There is nothing in KIRK that teaches or suggests **interrogating databases** for assembling a **chronologically current version of the patient's prescription history**. The system of KIRK, at best, would only have information specifically provided by the Doctors using the system of KIRK. The present claim assembles a **chronologically current version of the patient's prescription history** based on the **interrogation of databases**. The system of KIRK **cannot** be used to teach a chronologically current version of a prescription history that is assembled from interrogating databases as required in Applicant's currently pending claim because there is no teaching or suggestion of either the **interrogation of databases** or the **assembling** of a **chronologically current version of the patient's prescription history** based on the aforementioned interrogation.

The Office Action, at page 11, further acknowledges that KIRK does not teach the steps of including at least one medical condition of a patient or including information regarding the medical condition for which a therapeutic agent is prescribed

for. The Office Action alleges this feature is taught by the LUNAR ABSTRACT, main paragraph, sentence 2. Applicant notes that the element requiring "at least one medical condition of a patient or including information regarding the medical condition for which a therapeutic agent is prescribed" is not in claim 98.

The Office Action further admits, on page 11, that KIRK in view of the LUNAR ABSTRACT does not teach a chronologically current version of a patient's prescription history being displayed by not being permanently stored. The Office Action alleges that this feature is taught in ERTTEL (Col. 38, lines 15-20). Applicant respectfully quotes the sections of ERTTEL cited by the Examiner:

A record of the data quality status for these cases (i.e., the fact that **no messages had been generated**) is stored in a temporary file that is later used to generate profile reports. At the conclusion of this step, the active case file is purged and system is made ready to process another group of cases.

ERTTEL discloses providing an indication that **no messages had been generated**. This lack of information being generated is purported to teach a chronologically current version of patient prescription history. Applicant respectfully traverses. As can

Applicant: Christian Mayuad
Serial No.: 09/941,841
Filed: August 30, 2001
Page 35

be seen by the ERTEL disclosure, ERTEL does not disclose creating any chronological type list, nor does it disclose generating this list and having it not being permanently stored. All ERTEL discloses is a list that **no messages had been generated.** In view of the failure of ERTEL to teach or suggest the chronologically current version of a patient's prescription history, as required by the claim, and further in view of ERTEL not curing the admitted deficiencies in KIRK and the LUNAR ABSTRACT, Applicant asserts a rejection under 35 U.S.C. 103(a) cannot be properly applied. Applicant respectfully requests reconsideration and withdrawal of this rejection.

Applicant notes that the Office Action further alleges the prescription history not being permanently stored is taught by KIRK as noted on page 21, item 8(3).

However, a review of Col. 3, lines 20-42, and Col. 4, lines 46-68 fail to demonstrate any chronologically current version of patient's prescription history not being permanently stored. For example, Col. 3 recites, in part:

Doctors provide medication information including medication changes to monitoring service and

Applicant: Christian Mayuad
Serial No.: 09/941,841
Filed: August 30, 2001
Page 36

pharmacist. Pharmacist provides medication information to clients.

There is no recitation in Col. 3, lines 20-42, or Col. 4, lines 46-68 of anything relating to a patient's prescription history.

Because KIRK is deficient and has no teaching or suggestion for the chronological version of a patient's prescription history, the characterization in the Office Action, page 21, item 8(3), is improper.

C. The cited prior art references fail to show, among other limitations of Applicant's claims, drug formulary information identifying at least one of multiple drugs as a patient's drug benefit provider's drug formulary preferences to ensure that the electronic prescription is filled with a benefit plan recommended drug, as required by Applicant's claim 100.

The current Office Action, on page 13, item (n), rejects Claim 100 under 35 U.S.C. 103(a). The Office Action admits, on page 14, that the KIRK reference is deficient in that it does not teach **drug formulary information identifying at least one of multiple drugs as a patient's drug benefit provider's drug formulary preference to ensure that an electronic prescription is filled with a benefit plan recommended drug.**

The Office Action purports that this feature is well know and taught in CUMMINGS detailed paragraph 33, which states:

Further reference to the drawings reveals that FIG. 6 is a continuation of FIG. 5. Accordingly, referenced to the upper portion of FIG. 6 reveals that, next the system addresses the question as whether a proposed pattern of treatment is appropriate. This is indicated by rectangle 120. The physician or staff member enters into the system data identifying the purposed pattern of treatment, whereupon, the system compares the proposed pattern of treatment with the aforementioned recommended treatment protocols and provides an indication of any problem differences.

Applicant respectfully traverses this rejection. Nothing in this cited portion of CUMMINGS teaches or suggests anything relating to a patient's drug benefit provider drug formulary preferences to ensure that electronic prescriptions are filled with a benefit plan recommended drug as required in Applicant's claim. The proposed pattern of treatment with aforementioned recommended treatment protocols cannot be analogized to drug formulary information. Treatment protocols may or may not including formulary preferred drugs. The currently pending claim provides for a prescription fulfillment system that provides

drug formulary information identifying at least one of multiple drugs as a patient's drug benefit providers drug formulary preferences to ensure that the electronic prescription is filled with the benefit plan recommend drug.

The specification of the subject application, in paragraph [0039] describes the selection based on formulary requirements as follows:

System suggestions for condition-related drug selection may be further refined into categories such as relative cost, generic or brand name and so on. Where many drugs are available for treating a patient's active condition, one particularly useful presentation is by multiple lines of therapeutic preference according to drug formulary guidelines. Thus, within the patient's particular formulary there may be suggested first, second and third lines of therapy. Different suggestions may be made for different patients according to the preferences of the patient's particular drugs benefit management company.

For example, a specific treatment protocol may instruct a doctor to treat a patient with an oral diabetic medication. However, there are numerous oral diabetic medications available to prescribers and there would not be any indication as to which one to give this particular patient when using the system of CUMMINGS.

The teaching of any type of treatment protocol does not teach formulary preferences. Treatment protocols may teach things that by chance would fall within a formulary preference but do not necessarily instruct a prescriber as to a patients individual formulary preferred drug as claimed in subject Application.

This failure to teach the drug formulary information element of Claim 100 prevents a rejection under 35 U.S.C. 103(a). Without a teaching or suggestion to arrive at the claimed invention this rejection cannot be properly be applied. Applicant respectfully requests consideration and withdrawal of this rejection.

- D. The cited References fail to show, among other limitations of Applicant's claims, a drug contraindication review routine automatically activatable from the prescription fulfillment system prior to fulfillment, the drug contraindication review routine accessing contraindication information regarding the prescribed drug and generating an alert regarding a relevant such contraindication, as required by Applicant's claim 101.

Claim 101 has been rejection under 35 U.S.C. 103(a) as being unpatentable over KIRK in view of U.S. Patent No 5,642,731 to Kehr ("KEHR"). The Office Action acknowledges, on page 19,

final paragraph, that KIRK does not teach the drug formulary information element of Claim 101. The Office Action further alleges that this feature is taught by CUMMINGS, in paragraph 33.

As stated above in section C, in relation to pending Claim 100, CUMMINGS has no teaching or suggestion for relating anything of a prescription to a patient's formulary. Therefore, as in Claim 100 above, this combination of KIRK with CUMMINGS cannot be properly applied.

Further, the Office Action additionally acknowledges, on page 20, that KIRK does not teach drug contraindication review.

Applicant's claim 101 requires:

... a drug contraindication review routine automatically activatable from the prescription fulfillment system prior to fulfillment, the drug contraindication review routine accessing contraindication information regarding the prescribed drug and generating an alert regarding a relevant such contraindication.

The invention of KEHR is a vocal monitor that warns a person if they do not take their medicine, and congratulates the person when the medicine taken. The invention of KEHR has no

teaching or suggestion to **a drug contraindication review routine automatically activatable from the prescription fulfillment system prior to fulfillment and generating an alert regarding a relevant such contraindication** as provided in currently pending Claim 101. Because the KEHR reference fails to adequately teach or suggest this portion of the claimed invention. Applicant asserts the invention is non-obvious in view of the combination of KIRK, the LUNAR ABSTRACT, and KEHR.

Applicant further addresses from the Office Action, page 21, item 8(2), whereby the LUNAR ABSTRACT includes drug formulary information. The LUNAR ABSTRACT is a single paragraph. The single paragraph of LUNAR ABSTRACT allegedly has some type of treatment history recited. The "treatment history" of the LUNAR ABSTRACT does not have any connection to preferred drugs from a patient formulary. Drugs prescribed in the past may have included non-formulary drugs. The present invention, as claimed in Claims 100 and 101, provide drug formulation information specific to a patient's drug benefit provider. The LUNAR ABSTRACT has no such teaching or suggestion in its disclosure. Applicant asserts the failure of the cited references to teach or suggest the invention as now claimed

Applicant: Christian Mayuad
Serial No.: 09/941,841
Filed: August 30, 2001
Page 42

provides that the subject invention is not obvious in view of cited references. Applicant respectfully request reconsideration and withdrawal of this rejection.

Applicant respectfully requests reconsideration and withdrawal of all current rejections.

Based on the Amendments presented herein, Applicant respectfully asserts the application is now in condition for allowance. If the Examiner believes there are any additional issues that have not been resolved, the Examiner is invited to call the undersigned representative who is attorney of record in this case.

No new matter has been added by way of these amendments.

Applicant: Christian Mayuad
Serial No.: 09/941,841
Filed: August 30, 2001
Page 43

The Commissioner is hereby authorized to charge our Deposit Account No. 19-0734, should additional fee(s) be required, or credit any overpayment, in the filing of this document to expedite the prosecution of this application.

Date:

05/12/2008

Respectfully submitted,



David W. Barman, Reg. No. 47,225
Attorney for Applicant
Robert M. Schwartz, P.A.
2445 Hollywood Boulevard
Hollywood, FL 33020
Tel: (954) 924-0707
Fax: (954) 924-0717